### **DEPARTMENT OF FINANCE BILL ANALYSIS**

AMENDMENT DATE: June 26, 2008

POSITION: Oppose

June 26, 2008

BILL NUMBER: SB 1319

AUTHOR: M. Machado

SPONSOR: State Controller's Office RELATED BILLS: AB 2221 (Wolk); AB

2642 (Niello)

# **BILL SUMMARY: Unclaimed Property**

This bill would amend various sections of unclaimed property law in order to increase protections for owners of lost property.

Specifically, this bill would:

- Require the payment on interest on the amount of any claim paid to the owner for the period the property was on deposit in the Unclaimed Property Fund.
- Impose civil penalties instead of fines for noncompliance of transfer and reporting requirements, and increase the penalty from \$100 to \$200 per day up to a maximum of \$10,000. The State Controller's Office (SCO) would be allowed to waive the penalties for good cause.
- Increase the holding period of property with no apparent commercial value to seven years.
- Require financial institutions holders to disclose to new account owners that when an account or safe deposit box is opened, the property could escheat to the state due to inactivity.
- Require holders to comply with all provisions of the unclaimed property law in order to be relieved of all liability for the property.
- Provide that a claimant is not entitled to any market appreciation of the value of their securities occurring
  after the SCO has sold them. However, the claimant would receive interest for the period after the
  securities are sold.

## FISCAL SUMMARY

According to the SCO, this bill would result in a net receipt reduction of unclaimed property to the General Fund (GF) of \$10.7 million in 2008-09 for interest paid on claims. However, there would be net receipt increases of \$4.6 million in 2009-10 and \$18.9 million in 2010-11. Beginning in 2009-10, the interest paid on claims would be offset by new civil penalties paid by holders who file late reports, fail to provide corrected reports upon request by the SCO, and fail to comply with due diligence requests. According to the SCO, there are an estimated 600,000 businesses in the state with some reportable property. However, only about 16,000 businesses (2.7 percent) actually file annual reports on their escheatable property. These penalties are expected to provide incentives for holders to comply and should increase voluntary compliance. The SCO's fiscal projection for the collection of increased penalties appears optimistic and may not be achievable.

Decreased transfers to the GF from the Unclaimed Property Fund will occur as increased program support costs are necessary to implement this bill. According to the SCO, staffing and program support costs would increase by \$548,000 in 2009-10 to retain safe deposit box contents for seven years, enforce the new civil penalty provisions, and other administrative support. Beginning in 2010-11, the ongoing support costs would be \$326,000. The staffing increase would be subject to review and approval through the budget development process.

Please note, although the program costs are attributed to a special fund, support expenditures from this fund reduces the net amount that would otherwise transfer to the GF.

#### **COMMENTS**

Finance opposes this bill for the following reasons:

Analyst/Principal (0190) O. Chaves	Date	Program Budget Manager Veronica Chung-Ng	Date	
Department Deputy Di	rector	Date		
O	D	Data	Desition Assumed	
Governor's Office:	By:	Date:	Position Approved	
			Position Disapproved	
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)	

Form DF-43
BILL NUMBER

M. Machado June 26, 2008 SB 1319

- The state does not charge owners when they submit claims for unclaimed property for the various administrative costs related to sending out notices and maintaining unclaimed property. Thus, it does not seem appropriate to pay owners interest on unclaimed property since the state is unable to be reimbursed for its efforts in reuniting owners with their unclaimed property. The state incurs administrative costs into perpetuity since there is no statute of limitations to reclaim property once it has escheated to the state.
- Approximately half the states do not pay interest to owners of unclaimed property, while at least five states charge an administrative fee to the owner upon the property being claimed.
- While we understand the court has determined that interest is owed those with unclaimed property, it is
  premature to apply interest until the courts make a final determination as to the interest rate and whether it
  applies retroactively.
- Any interest paid would result in a net General Fund receipts reduction in 2008-09. Given the current condition of the General Fund, it would not be prudent to decrease resources.

Finance does not have any major concerns with the following provisions:

- Increasing the holding period to seven years for property with no commercial value.
- Requiring financial institutions to advise new account holders of potential property escheatment due to account inactivity.
- That a claimant is not entitled to any market appreciation of the value of their securities after the SCO has sold them.
- Requiring holder to comply with all unclaimed property laws in order not to be liable for the property.

Currently, two other bills have been introduced relating to unclaimed property. Assembly Bill 2221 (Wolk), with regard to safe deposit boxes, would amend the notification requirements of holders of unclaimed property in order to provide increased notice to owners. Assembly Bill 2642 (Niello), which would only take effect if AB 2221 is enacted, would require banking or financial organizations to escheat specified property to the state only if after a certain period reports or regular statements mailed first class by these institutions to the property owners are returned undelivered.

### **SUMMARY OF CHANGES**

Amendments to this bill since our analysis of the April 1, 2008 version include the following significant amendments which do not change our position:

- The prior version would have required holders to send one more notice to owners prior to escheatment of property. The amended version does not require holders to send the additional notice, and instead returns to the original one notice requirement.
- The prior version would have required the SCO to consider a claim within 90 days after it is filed, rather than the current 180 days, and caused an increase of disbursements by approximately \$15 million in 2009-10. The amended version deleted the 90 days requirement, and returns the claims consideration to the original 180 days.

	SO	(Fiscal Impact by Fiscal Year)					
Code/Department	LA	(Dollars in Thousands)					
Agency or Revenue	CO	PROP				Fund	
Туре	RV	98	FC	2008-2009 FC	2009-2010 FC	2010-2011 Code	
1609/Rev-Abnd Prp	RV	No	Р	-\$10,671 P	\$4,577 P	\$18,915 0001	
0840/Controller	SO	No		C	\$548 C	\$326 0970	

<u>Fund Code</u> <u>Title</u>

0001 General Fund

0970 Unclaimed Property Fund